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MCA INTEROFFICE MEMORANDUM
Form 2022 (Rev. 11/76)

DATE: April 8, 1982

TO: Sid Sheinberg

FROM: Joseph V. Di Muro

SUBJECT: "KING KONG" PRIVILEGED AND CONFIDENTIAL

COPIES: Shel Mittleman, Mel Sattler, Legal Files

You have inquired whether Universal is obligated to "deal" with De Laurentiis if Universal (or Universal jointly with another entity) elects to produce a King Kong motion picture.

The following provision in the June 4, 1980 Universal/RKO Settlement Agreement is relevant to your inquiry:

> Universal will not commence production of Universal's first King Kong motion picture based on any rights, if any, owned by RKO in the story or character King Kong unless Dino De Laurentiis Corporation and Dino De Laurentiis consent and waive any claims against RKO arising from or in connection with any alleged license heretofore allegedly entered into to make a sequel to the De Laurentiis King Kong motion picture.

It should be noted that RKO owns (a) only that material in the 1933 RKO King Kong motion picture and the later RKO Son of Kong motion picture, which is not contained in the 1932 King Kong novelization published by Grosset and Dunlap, and (b) the visual representation of the King Kong ape.

It may not be necessary to obtain a consent and waiver from De Laurentiis under the above provision of the Universal/RKO Settlement Agreement: (a) if Universal avoids the use in its first King Kong motion picture of any material owned by RKO from the 1933 King Kong motion picture or from the RKO Son of Kong motion picture; and (b) if Universal's ape is not "based on" the character King Kong (i.e., RKO's ape).

Notwithstanding the preceding paragraph, there is an element of risk involved in not obtaining a consent and waiver from De Laurentiis. However, by following the recommendations in the preceding paragraph and the

attached guidelines, we strengthen our position in the event of a claim or lawsuit by De Laurentiis.

Apart from the foregoing, the Universal/RKO Settlement Agreement provides that with respect to each King Kong motion picture produced by Universal, Universal pays to RKO the sum of $200,000 (subject to adjustment based on the National Consumer Price Index) plus 5% of the net profits.

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KING KONG
GUIDELINES

1. Under no circumstances should any of the personnel involved in the production of the Universal King Kong motion picture (including executives, the producer, writer, director and art director) screen RKO's (1933) King Kong or Son of Kong or De Laurentiis' King Kong for any purpose. Ideally, the fewer Universal production people who may have seen these pictures in the past the better. (We do not want a repetition of Bo Goldman's naive screening of RKO's King Kong when Goldman was writing the screenplay for our aborted King Kong project).

2. The Universal ape must be designed as an independent, original creation without reference to stills or other reproductions of RKO's ape or De Laurentiis' ape. The art director and other personnel involved should document the source from which the Universal ape evolved as well as any steps taken in the development of the design of the ape and the respective dates of such development. Such records should be maintained on an ongoing basis so as to be available in the event of litigation.

3. No personnel involved in the production of Universal's King Kong (no matter in what capacity) should read or refer to any publications dealing with the production of RKO's King Kong or De Laurentiis' King Kong or the development of the RKO ape or the De Laurentiis ape.

4. The writer of the screenplay for Universal's King Kong (in addition to shunning any screening of RKO's King Kong and Son of Kong and De Laurentiis' King Kong) should refrain from reading any screenplay for or other material relating to any of these pictures so that he will be in a position to so testify in the event of litigation. The writer may review, if he wishes, the novelization of King Kong published by Grosset and Dunlap in 1932. Universal (as the assignee of Richard Cooper) owns the motion picture rights in such novelization).

5. Any existing designs of the Universal ape for the aborted Universal King Kong project should not be used pending determination of the source from which they were developed.

6. An attorney should be assigned to the Universal King Kong project so that our production personnel may avoid any pitfalls during the course of production.

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